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March 23, 2009

Ms. Wendy Wyels
Supervisor, Compliance and Enforcement Section
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670

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Re: Draft Cleanup and Abatement Order, Rubicon Trail, El Dorado County

Dear Ms. Wyels:

This letter requests on behalf of El Dorado County a modest extension of the period of time in which the County can comment on the draft cleanup and abatement order dated January 23, 2009, and an extension of the time for the Regional Board staff to respond. Everyone with an interest in the Rubicon Trail is better served if the County and the Regional Board staffs each have sufficient time to consider the unique situation presented by the Rubicon Trail.

The draft order includes technical information concerning sediment and water quality issues, and it is necessary for the county's professional engineering staff to review the information in the hands of the Board, as well as other relevant information that the Board may not have, before responding. Everyone agrees that the study recently done by the California Geological Survey on the Rubicon Trail would be an exceedingly handy tool to assess the current condition and prepare a plan for future action. That study has been previewed but has not yet been delivered. We expect it at the end of the month, but that will be too late for the county or Regional Board staff to incorporate it into the current phase of the Board's process in any meaningful way.

In addition, the draft order makes a number of assumptions about what legal authority the County has over the Rubicon Trail, such as that the county has "allowed" OHV users to access the trail. It is the county's view that the Rubicon Trail is a public right of way established under federal law, and that the county does not have the legal ability to allow or disallow access by members of the public to it, nor can we require a permit or impose a quota. It is also the county's view that the county has no legal obligation to maintain the main portion of the Rubicon Trail, and that the county is legally prohibited from using the great part of its road maintenance

funds on it. Much of the draft order requires the county to perform tasks that it simply has no authority to do under federal or California law. I am preparing a memorandum to give to your legal staff this week which outlines what I believe the applicable law to be, and I hope that by working together we can reach a mutual accord on what the law affecting the trail is. There is no good reason to try to fashion a final order without a thorough and complete understanding of the legal issues. A few extra weeks now could avoid an unnecessary decade of litigation.

Finally, there is no downside to a modest extension at this time. The county Department of Transportation is already engaged in several activities that will further the goals of the draft order, and these activities will continue even if there is an extension of time. For example, the County Department of Transportation has advised that it has scheduled the following funded projects on the Rubicon Trail for the Summer and Fall of 2009:

- Continue with preliminary engineering and environmental review for the construction of bridges at Gerle Creek and Ellis Creek.
- Install water breaks, cross drains and rock filled rolling dips on a 2,000' section of the Rubicon Trail just west of the Ellis Creek crossing.
- Dispense wagbags and cardboard commodes at the Loon Lake Trailhead in cooperation with Rubicon Trail Foundation volunteers.
- Install educational signage at Loon Lake Trailhead and Wentworth Springs campground to encourage "pack it in, pack it out." and use of wag bags on the trail.

In addition, the following projects have been developed and are dependent upon approval of grants by the California Department of Parks and Recreation OHMVR Division:

- Install a double-vault restroom near the Ellis Creek crossing. (Development Grant)
- Purchase an off-road rubber-track dump vehicle for maintenance on the Rubicon Trail. (Ground Operations Grant)
- Trail maintenance projects to install water bars, rock lined rolling dips and cross drains east of the Ellis Creek crossing (Ground Operations Grant)
- Complete a Restroom Feasibility Study for the Rubicon Trail (Planning Grant)
- Purchase and install an Information Kiosk to be installed at the Loon Lake Trailhead (Education Grant)
- Enhance the Rubicon Trail Webpage on the El Dorado County Website with up to date information about trail use, guidelines, spill containment, "pack it in, pack it out", volunteer training and Rubicon Trail Stewardship (Education Grant)


As you can see, the county's effort to improve the Rubicon Trail is an ongoing process, and it will continue during any extension granted by the Regional Board. The county needs a little more time in order to provide the best information to the Regional Board staff, and the county is equally concerned that the Regional Board staff have sufficient time to properly respond.

Ms. Wendy Wyels
March 24, 2009
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Thank you in advance for your consideration of this request. I would be happy to discuss it with you at any time.

Very Truly Yours,

LOUIS B. GREEN
County Counsel

By: 

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Chief Ass't. County Counsel

ELK:km